

1 HB485  
2 129639-3  
3 By Representatives Williams (D), Mask, Roberts, Long, Boman,  
4 Patterson, Johnson (K), Nordgren, Collins and Greer  
5 RFD: Economic Development and Tourism  
6 First Read: 07-APR-11

1 ENGROSSED

2  
3  
4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
7

8 To amend Sections 40-9B-3, 40-9B-4, and 40-18-193,  
9 Code of Alabama 1975, to allow the governing body of a  
10 municipality, county, or a public industrial authority to  
11 grant abatements of certain ad valorem taxes and construction  
12 related transaction taxes to private users of data processing  
13 centers for a period of up to thirty years and reduce the  
14 corresponding employment thresholds, provided that certain  
15 minimum capital investment requirements are met.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. This act shall be known and may be cited  
18 as the Alabama Data Processing Center Economic Incentive  
19 Enhancement Act of 2011.

20 Section 2. Sections 40-9B-3, 40-9B-4, and 40-18-193,  
21 Code of Alabama 1975, are amended to read as follows:

22 "§40-9B-3.

23 "(a) For purposes of this chapter, the following  
24 words and phrases mean:

25 "(1) ABATE, ABATEMENT. A reduction or elimination of  
26 a taxpayer's liability for tax or payments required to be made  
27 in lieu thereof. An abatement of transaction taxes imposed

1 under Chapter 23 of this title, or payments required to be  
2 made in lieu thereof, shall relieve the seller from the  
3 obligation to collect and pay over the transaction tax as if  
4 the sale were to a person exempt, to the extent of the  
5 abatement, from the transaction tax.

6 "(2) ALTERNATIVE ENERGY RESOURCES. The definition  
7 given in Section 40-18-1.

8 "(3) CONSTRUCTION RELATED TRANSACTION TAXES. The  
9 transaction taxes imposed by Chapter 23 of this title, or  
10 payments required to be made in lieu thereof, on tangible  
11 personal property and taxable services incorporated into an  
12 industrial development property, and on computer software  
13 acquired for use in the operation of a data processing center,  
14 the cost of which may be added to capital account with respect  
15 to the property, determined without regard to any rule which  
16 permits expenditures properly chargeable to capital account to  
17 be treated as current expenses.

18 "(4) DATA PROCESSING CENTER. An establishment at  
19 which not less than ~~fifty~~ twenty new jobs are located, the  
20 average annual total compensation, including benefits, of such  
21 new jobs to be not less than forty thousand dollars (\$40,000),  
22 and ~~which~~ such establishment is engaged in the provision of  
23 complete processing and specialized reports from data, the  
24 provision of automated data processing and data entry  
25 services, the provision of an infrastructure for hosting or  
26 data processing services, the provision of specialized hosting  
27 activities, the provision of application service provisioning,

1 the provision of general time-share mainframe facilities, or  
2 some combination of the foregoing, without regard to whether  
3 any other activities are conducted at the establishment.

4 "(5) EDUCATION TAXES. Ad valorem taxes, or payments  
5 required to be made in lieu thereof, that must, pursuant to  
6 the Constitution of Alabama of 1901, as amended, legislative  
7 act, or the resolution or other action of the governing board  
8 authorizing the tax, be used for educational purposes or for  
9 capital improvements for education and local construction  
10 related transaction taxes levied for educational purposes or  
11 for capital improvements for education.

12 "(6) HEADQUARTERS FACILITY. Any trade or business  
13 described in the 2007 North American Industry Classification  
14 System, promulgated by the Executive Office of the President  
15 of the United States, Office of Management and Budget,  
16 National Industry 551114, at which not less than fifty new  
17 jobs are located.

18 "(7) HYDROPOWER PRODUCTION. The definition given in  
19 Section 40-18-1.

20 "(8) INDUCEMENT. Refers to an agreement, or an  
21 "inducement agreement," entered into between a private user  
22 and a public authority or county or municipal government  
23 and/or a resolution or other official action, an "inducement  
24 resolution," "inducement letter," or "official action" adopted  
25 by a public authority or county or municipal government, in  
26 each case expressing, among other things, the present intent  
27 of such public authority or county or municipal government to

1 issue bonds in connection with the private use property  
2 therein described.

3 "(9) INDUSTRIAL DEVELOPMENT PROPERTY. Real and/or  
4 personal property acquired in connection with establishing or  
5 expanding an industrial or research enterprise in Alabama.

6 "(10) INDUSTRIAL OR RESEARCH ENTERPRISE.

7 "a. Any trade or business described in the 2007  
8 North American Industry Classification System, promulgated by  
9 the Executive Office of the President of the United States,  
10 Office of Management and Budget, Sectors 31 (other than  
11 National Industry 311811), 32, and 33; Subsectors 423, 424,  
12 511, and 927; Industry Groups 5417, 5415, and 5182 (without  
13 regard to the premise that data processing and related  
14 services be performed in conjunction with a third-party);  
15 Industries 11331 and 48691; and National Industries 115111,  
16 517110, 541380, and 561422 (other than establishments that  
17 originate telephone calls) and includes such trades and  
18 businesses as may be hereafter reclassified in any subsequent  
19 publication of the North American Industry Classification  
20 System or other industry classification system developed in  
21 conjunction with the United States Department of Commerce, or  
22 any process or treatment facility which recycles, reclaims, or  
23 converts any materials, which include solids, liquids, or  
24 gases, to a reusable product.

25 "b. With respect to abatements granted in accordance  
26 with Section 40-9B-9, and only with respect to such  
27 abatements, "industrial or research enterprise" means any

1 trade or business described in the 2007 North American  
2 Industry Classification System within Subsector 493  
3 (Warehousing and Storage), Industry Number 488310 (Port and  
4 Harbor Operations), or Industry Number 488320 (Marine Cargo  
5 Handling), when such trade or business is conducted on  
6 premises in which the Alabama State Port Authority has an  
7 ownership, leasehold, or other possessory interest and such  
8 premises are used as part of the operations of the Alabama  
9 State Port Authority.

10 "c. "Industrial or research enterprise" includes the  
11 above-described trades and business and any others as may  
12 hereafter be reclassified in any subsequent publication of the  
13 NAICS or similar industry classification system developed in  
14 conjunction with the United States Department of Commerce or  
15 Office of Management and Budget.

16 "d. "Industrial or research enterprise" also  
17 includes any underground natural gas storage facility which is  
18 located in the Gulf Opportunity Zone, as that phrase is  
19 defined in the Gulf Opportunity Zone Act of 2005, developed  
20 from existing geologic reservoirs, including, without  
21 limitation, salt domes, and placed in service on or before  
22 December 31, 2013.

23 "e. "Industrial or research enterprise" also  
24 includes any plant, property, or facility that meets both of  
25 the following:

26 "1. It produces electricity from:

1           "(i) Alternative energy resources and has capital  
2 costs of at least one hundred million dollars (\$100,000,000);  
3 or

4           "(ii) Hydropower production and has capital costs of  
5 at least five million dollars (\$5,000,000).

6           "2. All or a portion of the plant, property, or  
7 facility is owned by one or more of the following: A utility  
8 described in Section 37-4-1(7)a., an entity organized under  
9 the provisions of Chapter 6 of Title 37, or an authority both  
10 organized and existing pursuant to the provisions of Chapter  
11 50A of Title 11 and subject to the payments required to be  
12 made in lieu of ad valorem, sales, use, license, and severance  
13 taxes imposed by Section 11-50A-7, or an entity in which one  
14 or more of the foregoing owns an interest.

15           "f. "Industrial or research enterprise" also  
16 includes any headquarters facility.

17           "g. "Industrial or research enterprise" also  
18 includes any data processing center.

19           "h. "Industrial or research enterprise" also  
20 includes any research and development facility.

21           "i. "Industrial or research enterprise" also  
22 includes any renewable energy facility.

23           "(11) MAJOR ADDITION. Any addition to an existing  
24 industrial development property that equals the lesser of: 30  
25 percent of the original cost of the industrial development  
26 property or two million dollars (\$2,000,000). For purposes of  
27 this subsection, the original cost of existing industrial

1 development property shall be the amount of industrial  
2 development property with respect to which an abatement was  
3 granted under this chapter when the property was constructed,  
4 or if the existing industrial development property was  
5 constructed before January 1, 1993, the maximum amount that  
6 would have been allowed if the provisions of this chapter had  
7 applied at the time it was constructed. Only property that  
8 constitutes industrial development property shall be taken  
9 into account in making the determination in the previous  
10 sentence. Major addition shall include any addition costing at  
11 least two million dollars (\$2,000,000) which constitutes an  
12 industrial or research enterprise, regardless of whether added  
13 to an existing industrial development property.

14 "(12) MAXIMUM EXEMPTION PERIOD. Except as provided  
15 in Section 40-9B-11, either

16 "a. A ~~a~~ period equal to the shorter of:

17 "~~1.a.~~ Ten years from and after: ~~1.~~ (i) The date of  
18 initial issuance by a county, city, or public authority of  
19 bonds to finance any costs of a private use property, or ~~2.~~  
20 (ii) If no such bonds are ever issued, the later of: ~~(i)~~ A.  
21 The date on which title to the property was acquired by or  
22 vested in the county, city, or public authority, or ~~(ii)~~ B.  
23 The date on which the property is or becomes owned, for  
24 federal income tax purposes, by a private user; or

25 "~~2.b.~~ The weighted average economic life of the  
26 assets comprising such property, determined consistently with

1 the provisions of 26 U.S.C. § 147(b) and measured from the  
2 date such property is placed in service; or

3 "b. Exclusively with respect to a private user of a  
4 data processing center, (i) a period of ten years from and  
5 after the date on which private use property is or becomes  
6 owned, for federal income tax purposes, by such private user,  
7 if the aggregate capital investment in the data processing  
8 center by the private user does not exceed \$100,000,000 within  
9 10 years from the date on which the private use property is  
10 placed in service, (ii) a period of twenty years from and  
11 after the date on which private use property is or becomes  
12 owned, for federal income tax purposes, by such private user,  
13 if the aggregate capital investment in the data processing  
14 center by the private user exceeds \$100,000,000 but is not  
15 greater than \$300,000,000 within 10 years from the date on  
16 which the private use property is placed in service, or (iii)  
17 a period of thirty years from and after the date on which  
18 private use property is or becomes owned, for federal income  
19 tax purposes, by such private user, if the aggregate capital  
20 investment in the data processing center by the private user  
21 exceeds \$100,000,000 within 10 years from the date on which  
22 the private use property is placed in service and exceeds  
23 \$300,000,000 within 20 years from the date on which the  
24 private use property is placed in service. For purposes of  
25 this paragraph b., a private user's aggregate capital  
26 investment in a data processing center shall include all real  
27 and personal property comprising a data processing center, the

1 costs of which may be capitalized for federal income tax  
2 purposes. In no event shall abatements of construction related  
3 transaction taxes or noneducational ad valorem taxes granted  
4 for a data processing center apply beyond the expiration of  
5 the applicable maximum exemption period.

6 "(13) MORTGAGE AND RECORDING TAXES. The taxes  
7 imposed by Chapter 22 of this title.

8 "(14) NONEDUCATIONAL AD VALOREM TAXES. Ad valorem  
9 taxes, or payments required to be made in lieu thereof,  
10 imposed by the state, counties, municipalities, and other  
11 taxing jurisdictions of Alabama that are not required to be  
12 used for educational purposes or for capital improvements for  
13 education.

14 "(15) PERSON. Includes any individual, partnership,  
15 trust, estate, or corporation.

16 "(16) PRIVATE USER. Any individual, partnership, or  
17 corporation organized for profit that is or will be treated as  
18 the owner of private use property for federal income tax  
19 purposes, any entity organized under Chapter 6 of Title 37,  
20 and any authority both organized and existing pursuant to  
21 Chapter 50A of Title 11 and subject to the payments required  
22 to be made in lieu of ad valorem, sales, use, license, and  
23 severance taxes imposed by Section 11-50A-7.

24 "(17) PRIVATE USE INDUSTRIAL PROPERTY. Private use  
25 property that also constitutes industrial development  
26 property.

1           "(18) PRIVATE USE PROPERTY. Any real and/or personal  
2 property which is or will be treated as owned by a private  
3 user for federal income tax purposes even though title may be  
4 held by a public authority or municipal or county government;  
5 any real and/or personal property which is owned by any entity  
6 organized under Chapter 6 of Title 37; and any real and/or  
7 personal property which is owned by any authority both  
8 organized and existing pursuant to Chapter 50A of Title 11,  
9 and subject to the payments required to be made in lieu of ad  
10 valorem, sales, use, license, and severance taxes imposed by  
11 Section 11-50A-7.

12           "(19) PUBLIC AUTHORITY. A corporation created for  
13 public purposes pursuant to a provision of the Constitution of  
14 Alabama of 1901, or a general or local law that authorized it  
15 to issue bonds, the interest on which is exempt from the  
16 Alabama income tax, as in effect on May 21, 1992.

17           "(20) PUBLIC INDUSTRIAL AUTHORITY. A public  
18 authority authorized to issue bonds to acquire, construct,  
19 equip, or finance industrial development property.

20           "(21) RENEWABLE ENERGY FACILITY. Any plant,  
21 property, or facility that either:

22           "a. Produces electricity or natural gas, in whole or  
23 in part, from biofuels as such term is defined in Section  
24 2-2-90(c) (2) or from renewable energy resources as such term  
25 is defined in Section 40-18-1(30) with the exception that  
26 hydropower production shall be excluded from such definition;  
27 or

1            "b. Produces biofuel as such term is defined in  
2 Section 2-2-90(c)(2).

3            "(22) RESEARCH AND DEVELOPMENT FACILITY. An  
4 establishment engaged in conducting original investigations  
5 undertaken on a systematic basis to gain new knowledge or  
6 applying research findings or other scientific knowledge to  
7 create new or significantly improved products or processes, or  
8 both.

9            "(23) STATEMENT OF INTENT. A written statement of  
10 intent to claim an abatement provided in this chapter, or to  
11 petition for local tax abatement, relating to an industrial or  
12 research enterprise described in paragraph e. of subdivision  
13 (10) of this subsection that is filed with the Department of  
14 Revenue at any time prior to the date on which the industrial  
15 or research enterprise described in paragraph e. of  
16 subdivision (10) of this subsection is placed in service in  
17 accordance with such procedures and on such form or forms as  
18 may be prescribed by the Department of Revenue. Such statement  
19 of intent shall contain a description of the industrial or  
20 research enterprise described in paragraph e. of subdivision  
21 (10) of this subsection; the date on which the acquisition,  
22 construction, installation, or equipping of the industrial or  
23 research enterprise described in paragraph e. of subdivision  
24 (10) of this subsection was commenced or is expected to  
25 commence; the actual or, if not known, the estimated capital  
26 costs of the industrial or research enterprise described in  
27 paragraph e. of subdivision (10) of this subsection; the

1 number of new employees to be employed at the industrial or  
2 research enterprise described in paragraph e. of subdivision  
3 (10) of this subsection; and any other information required by  
4 the Department of Revenue.

5 "(b) The abatements of ad valorem taxes, and  
6 payments in lieu thereof, allowed by amendments to this  
7 section by Act 2008-275 shall become effective for projects  
8 for which statements of intent are filed after December 31,  
9 2011. No ad valorem taxes, or payments in lieu thereof, shall  
10 be abated for periods prior to January 1, 2012. The other  
11 abatements allowed by amendments made to this section by Act  
12 2008-275 shall become effective after December 31, 2011.

13 "§40-9B-4.

14 "(a) Noneducational ad valorem taxes, construction  
15 related transaction taxes, except those local construction  
16 related transaction taxes levied for educational purposes or  
17 for capital improvements for education, and mortgage and  
18 recording taxes, or payments required to be made in lieu  
19 thereof, and in the case of a qualifying industrial or  
20 research enterprise described in Section 40-9B-3(a)(10)e.  
21 which is owned by an entity organized under Chapter 6 of Title  
22 37, or by an authority both organized and existing pursuant to  
23 Chapter 50A of Title 11, and subject to the payments required  
24 to be made in lieu of ad valorem, sales, use, license, and  
25 severance taxes imposed by Section 11-50A-7, in addition to  
26 the foregoing, all other ad valorem taxes, or payments  
27 required to be made in lieu thereof, imposed by the state,

1 counties, municipalities, and other taxing jurisdictions of  
2 Alabama, may be abated with respect to private use industrial  
3 property and security documents and other recordable documents  
4 associated therewith as provided in this chapter.

5 "(b) No abatement of noneducational ad valorem  
6 taxes, other ad valorem taxes, or payments required to be made  
7 in lieu of the foregoing, may exceed the maximum exemption  
8 period. No further abatement with respect to the same private  
9 use industrial property may be granted unless there is a major  
10 addition to the property, in which event abatement may be  
11 granted only with respect to the noneducational ad valorem  
12 taxes, and in the case of a qualifying industrial or research  
13 enterprise described in Section 40-9B-3(a)(10)e. which is  
14 owned by an entity organized under Chapter 6 of Title 37, or  
15 by an authority both organized and existing pursuant to  
16 Chapter 50A of Title 11, and subject to the payments required  
17 to be made in lieu of ad valorem, sales, use, license, and  
18 severance taxes imposed by Section 11-50A-7, in addition to  
19 the noneducational ad valorem taxes, with respect to all other  
20 ad valorem taxes, or payments required to be made in lieu  
21 thereof, imposed by the state, counties, municipalities, and  
22 other taxing jurisdictions of Alabama, on the major addition  
23 by complying with the procedures set forth in this chapter.

24 Notwithstanding the immediately preceding sentence, with  
25 respect to a data processing center, an abatement of  
26 noneducational ad valorem taxes, other ad valorem taxes, or  
27 payments required to be made in lieu thereof, shall apply to

1 all real and personal property comprising a data processing  
2 center, the costs of which may be capitalized for federal  
3 income tax purposes, acquired at any time during the  
4 applicable maximum exemption period, including, but not  
5 limited to, computers, software, equipment supporting  
6 computing, networking, or data storage; cooling systems,  
7 cooling towers, and other temperature infrastructure; power  
8 infrastructure for transformation, distribution, or management  
9 of electricity used for the maintenance and operation of a  
10 data processing center, including, but not limited to,  
11 exterior dedicated business-owned substations, backup power  
12 generation systems, battery systems, and related  
13 infrastructure; and any other equipment necessary for the  
14 maintenance and operation of a data processing center.

15           "(c) An abatement of construction related  
16 transaction taxes, or payments required to be made in lieu  
17 thereof, shall apply only to tangible personal property and  
18 taxable services incorporated into a private use industrial  
19 property, and on computer software acquired for use in the  
20 operation of a data processing center, the cost of which may  
21 be added to capital account with respect to the property,  
22 determined without regard to any rule which permits  
23 expenditures properly chargeable to capital account to be  
24 treated as current expenses. No abatement of construction  
25 related transaction taxes, or payments required to be made in  
26 lieu thereof, shall extend beyond the date the private use  
27 industrial property is placed in service; provided, however,

1 that an abatement of construction related transaction taxes,  
2 or payments required to be made in lieu thereof, for a data  
3 processing center shall apply to all taxable services and  
4 acquisitions of real and personal property comprising the data  
5 processing center, the costs of which may be capitalized for  
6 federal income tax purposes, occurring at any time during the  
7 applicable maximum exemption period, including, but not  
8 limited to, computers, software, equipment supporting  
9 computing, networking, or data storage; cooling systems,  
10 cooling towers, and other temperature infrastructure; power  
11 infrastructure for transformation, distribution, or management  
12 of electricity used for the maintenance and operation of a  
13 data processing center, including, but not limited to,  
14 exterior dedicated business-owned substations, backup power  
15 generation systems, battery systems, and related  
16 infrastructure; and any other equipment necessary for the  
17 maintenance and operation of a data processing center. No  
18 further abatement may be granted for construction related  
19 transaction taxes, or payments required to be made in lieu  
20 thereof, with respect to the private use industrial property  
21 unless incurred in connection with a major addition, in which  
22 event only construction related transaction taxes, or payments  
23 required to be made in lieu thereof, that may be added to  
24 capital account with respect to the major addition, determined  
25 without regard to any rule which permits expenditures properly  
26 chargeable to capital account to be treated as current  
27 expenses, may be abated by complying with the procedures set

1       forth in Act 92-599 as amended, and as amended by Act  
2       2008-275. Except in the case of a qualifying industrial or  
3       research enterprise described in Section 40-9B-3(a)(10)e.  
4       which is owned by an entity organized under Chapter 6 of Title  
5       37, or by an authority both organized and existing pursuant to  
6       Chapter 50A of Title 11, and subject to the payments required  
7       to be made in lieu of ad valorem, sales, use, license, and  
8       severance taxes imposed by Section 11-50A-7, no local  
9       construction related transaction taxes levied for educational  
10      purposes or capital improvements for education, or payments  
11      required to be made in lieu thereof, may be abated.

12               "(d) Mortgage and recording taxes with respect to  
13      mortgages, deeds, and documents relating to issuing or  
14      securing obligations and conveying title into or out of the  
15      public authority or county or municipal government with  
16      respect to a private use industrial property may be abated by  
17      complying with the procedures set forth in this chapter.

18               "(e) An abatement under this section may be granted  
19      only with respect to private use industrial property that has  
20      not previously been placed in service by the private user who  
21      is applying for the abatement or by a person who is a related  
22      party, as defined in 26 U.S.C. §267, with respect to such  
23      private user.

24               "(f) (1) For a qualifying industrial or research  
25      enterprise described in Section 40-9B-3(a)(10)e., which is  
26      owned by a utility described in Section 37-4-1(7)a., and which  
27      is a coal gasification or liquefaction project or an advanced

1 fossil-based generation project, as such terms are defined in  
2 Section 40-18-1, or which utilizes hydropower production, an  
3 abatement under this section shall be in an amount equal to  
4 100 percent of the state noneducational ad valorem taxes owed  
5 for plant, property, and facilities for the maximum exemption  
6 period, and in an amount equal to 50 percent of the state  
7 construction related transaction taxes. The abatement shall  
8 not be subject to the procedures in Section 40-9B-5 or  
9 40-9B-6.

10 "(2) For a qualifying industrial or research  
11 enterprise described in Section 40-9B-3(a)(10)e., which is  
12 owned by a utility described in Section 37-4-1(7)a., and which  
13 is a project using an alternative energy resource the  
14 abatements for which are not provided in subdivision (1), an  
15 abatement under this section shall be in an amount equal to  
16 100 percent of the state noneducational ad valorem taxes owed  
17 for plant, property, and facilities for the maximum exemption  
18 period, and in an amount equal to 50 percent of the state  
19 construction related transaction taxes. The abatement shall  
20 not be subject to the procedures in Section 40-9B-5 or  
21 40-9B-6.

22 "(3) For a qualifying industrial or research  
23 enterprise described in Section 40-9B-3(a)(10)e., which is  
24 owned by an entity organized under Chapter 6 of Title 37, an  
25 abatement under this section shall be in an amount equal to  
26 100 percent of the ad valorem taxes owed for plant, property,  
27 and facilities for the maximum exemption period, and in an

1 amount equal to 100 percent of the construction related  
2 transaction taxes. An abatement of ad valorem taxes levied or  
3 imposed by counties or municipalities may be granted as  
4 provided in subsection (h). An abatement of the construction  
5 related transaction taxes imposed by the governing body of a  
6 county pursuant to authority conferred under Article 1 of  
7 Chapter 12 of Title 40, or any general, special, or local act  
8 of the Legislature, and such transaction taxes imposed by the  
9 governing body of a municipality pursuant to authority  
10 conferred under Article 3 of Chapter 51 of Title 11, or any  
11 general, special, or local act of the Legislature, and all  
12 transaction taxes imposed by any other local taxing  
13 jurisdiction of Alabama may be granted as provided in  
14 subsection (h). The abatement shall not be subject to the  
15 procedures in Section 40-9B-5 or 40-9B-6.

16 "(4) For a qualifying industrial or research  
17 enterprise described in Section 40-9B-3(a)(10)e., which is  
18 owned by an authority both organized and existing pursuant to  
19 Chapter 50A of Title 11, and subject to the payments required  
20 to be made in lieu of ad valorem, sales, use, license, and  
21 severance taxes imposed by Section 11-50A-7, an abatement  
22 under this section against the payments required to be made in  
23 lieu of taxes imposed by Section 11-50A-7, shall be allowed in  
24 an amount equal to 100 percent of the payments required to be  
25 made in lieu of ad valorem taxes owed for plant, property, and  
26 facilities for the maximum exemption period, and in an amount  
27 equal to 100 percent of the payments required to be made in

1 lieu of the construction related transaction taxes, including,  
2 without limitation, payments required to be made in lieu of  
3 all transaction taxes imposed by the governing body of a  
4 county pursuant to authority conferred under Article 1 of  
5 Chapter 12 of this title, or any general, special, or local  
6 act of the Legislature, all transaction taxes imposed by the  
7 governing body of a municipality pursuant to authority  
8 conferred under Article 3 of Chapter 51 of Title 11, or any  
9 general, special, or local act of the Legislature, and  
10 payments required to be made in lieu of all transaction taxes  
11 imposed by any other taxing jurisdiction of Alabama. The  
12 abatement of such payments required to be made in lieu of  
13 local taxes may be granted as provided in subsection (h). The  
14 abatement shall not be subject to the procedures in Section  
15 40-9B-5 or 40-9B-6.

16 "(5) For a qualifying industrial or research  
17 enterprise described in Section 40-9B-3(a)(10)e., which is  
18 owned by a utility described in Section 37-4-1(7)a., the  
19 abatement for state noneducational ad valorem taxes provided  
20 in subdivision (1) or (2) of this subsection, shall be equal  
21 to 100 percent of the state noneducational ad valorem taxes  
22 owed for plant, property, and facilities for the maximum  
23 exemption period if the industrial or research enterprise is  
24 located in either of the following:

25 "a. Any area designated or created as an enterprise  
26 zone by law or that is governed by the Alabama Enterprise Zone  
27 Act.

1            "b. 1. Any Alabama county which is considered to be  
2 less developed. A county is considered to be less developed if  
3 it has been found to be less developed by the Alabama  
4 Department of Industrial Relations using the most current data  
5 available from the United States Departments of Labor or  
6 Commerce, the United States Bureau of the Census, or any other  
7 federal or state agency, and which finding shall be made not  
8 later than January 1 of each year thereafter.

9            "2. A county shall be found to be less developed if  
10 it is ranked as the forty-fifth through sixty-seventh county,  
11 inclusive, using the following factors:

12            "(i) Percent change in population over the most  
13 recent five-year period.

14            "(ii) Personal per capita income in the last  
15 calendar year for which data are available.

16            "(iii) The average percent employed over the last 12  
17 months for which data are available.

18            "3. The factors used in ranking counties shall be  
19 weighted in the following manner:

20            "(i) Percent change in population (25 percent).

21            "(ii) Personal per capita income (25 percent).

22            "(iii) Average percent employed (50 percent).

23            "(6) a. To the extent that a plant, property, or  
24 facility described in Section 40-9B-3(a)(10)e., is owned in  
25 whole or in part by one or more private users listed  
26 hereinafter in subparagraph c., including, but not limited to,  
27 ownership as tenants in common, joint tenants, or owners of an

1 undivided interest, then each private user shall be entitled  
2 to the abatement allowed under this section with a percentage  
3 limitation equal to the ownership interest percentage of the  
4 private user multiplied by the percentage limitation found in  
5 this subsection applicable to the private user for the tax, or  
6 payment in lieu of tax, in question.

7 "b. To the extent that a plant, property, or  
8 facility described in Section 40-9B-3(a)(10)e. is owned by a  
9 private user which is itself owned in whole or in part by one  
10 or more of the entities listed hereinafter in subparagraph c.,  
11 then the private user shall be entitled to the abatement  
12 allowed under this section with a percentage limitation equal  
13 to the sum, for all owners, of the ownership interest  
14 percentage of each owner multiplied by the percentage  
15 limitation found in this subsection applicable to the owner  
16 for the tax, or payment in lieu of tax, in question.

17 "c. The entities listed in this subparagraph c. are:

18 "1. A utility described in Section 37-4-1(7)a.

19 "2. An entity organized under Chapter 6 of Title 37.

20 "3. An authority both organized and existing  
21 pursuant to Chapter 50A of Title 11 and subject to the  
22 payments required to be made in lieu of ad valorem, sales,  
23 use, license, and severance taxes imposed by Section 11-50A-7.

24 "(7) No abatement for mortgage and recording taxes,  
25 local noneducational ad valorem taxes, or local noneducational  
26 construction related transaction taxes shall be granted to a  
27 qualifying industrial or research enterprise described in

1 Section 40-9B-3(a)(10)e., owned by a utility described in  
2 Section 37-4-1(7)a., except upon the approval of the abatement  
3 by the governing body of the county or municipality as  
4 provided in subsection (b) of Section 40-9B-5.

5 "(g) The abatements of ad valorem taxes and payments  
6 in lieu thereof allowed by amendments to this section by Act  
7 2008-275 shall become effective for projects for which  
8 statements of intent are filed after December 31, 2011. No ad  
9 valorem taxes, or payments in lieu thereof, shall be abated  
10 for periods prior to January 1, 2012. The other abatements  
11 allowed by amendments made to this section by Act 2008-275  
12 shall become effective after December 31, 2011.

13 "(h) For a qualifying industrial or research  
14 enterprise described in Section 40-9B-3(a)(10)e., the approval  
15 of the abatement of a specific ad valorem tax or construction  
16 related tax levied or imposed by a county or municipality, or  
17 payments required to be made in lieu thereof, shall take  
18 effect only upon adoption of a resolution by the governing  
19 body of that county or municipality approving such abatement  
20 or abatements.

21 "§40-18-193.

22 "(a) It shall be a condition to the receipt of a  
23 capital credit that:

24 "(1) For a qualifying project described in Section  
25 40-18-190(a)(13)c. ~~or f.~~, not less than 50 jobs for new  
26 employees at the qualifying project be provided commencing  
27 with the date which is not later than one year after the

1       qualifying project is placed in service and that the average  
2       wages for all new employees at the qualifying project be not  
3       less than the base wage requirement by the date which is not  
4       later than one year after the qualifying project is placed in  
5       service and during each year during which all or any part of  
6       the capital credit is available with respect to the qualifying  
7       project.

8               "(2) For any qualifying project other than a  
9       qualifying project described in Sections 40-18-190(a)(13)c. ~~or~~  
10      ~~f.~~, either of the following occur:

11              "a. Not less than 20 jobs for new employees at a  
12      qualifying project except as otherwise provided in this  
13      subdivision and commencing with the date which is not later  
14      than one year after the qualifying project is placed in  
15      service and that the average wages for all new employees at  
16      the qualifying project be not less than the base wage  
17      requirement by the date which is not later than one year after  
18      the qualifying project is placed in service and during each  
19      year during which all or any part of the capital credit is  
20      available with respect to the qualifying project.

21              "b. Not less than 15 jobs for new employees at the  
22      qualifying project which is a small business addition be  
23      provided commencing with the date which is not later than one  
24      year after the qualifying project is placed in service and  
25      that the average wages for all new employees at the qualifying  
26      project be not less than the base wage requirement by the date  
27      which is not later than one year after the qualifying project

1 is placed in service and during each year during which all or  
2 any part of the capital credit is available with respect to  
3 the qualifying project.

4 "c. Not less than five jobs for new employees at the  
5 qualifying project which is located in a favored geographic  
6 area and commencing with the date which is not later than one  
7 year after the qualifying project is placed in service and  
8 that the average wages for all new employees at the qualifying  
9 project be not less than the base wage, as defined in Section  
10 40-18-190(a) (1), requirement by the date which is not later  
11 than one year after the qualifying project is placed in  
12 service and during each year during which all or part of the  
13 capital credit is available with respect to the qualifying  
14 project.

15 "If an investing company closes or reduces its level  
16 of employment at an existing facility in this state and within  
17 two years following the closing or reduction in its level of  
18 employment places a qualifying project in service, only the  
19 number of new employees in excess of the number of employees  
20 who worked at the existing facility at the time of the closure  
21 or prior to the reduction in employment shall be deemed to be  
22 new employees for purposes of this section.

23 "(b) The Legislature recognizes that one or more  
24 entities may enter into a joint venture in the form of a  
25 limited liability company, partnership, or other form of  
26 business entity in connection with a qualifying project. It is  
27 the intent of this article that the requirements of this

1 article respecting minimum capital costs and employment be  
2 applied to the qualifying project and that the capital credit  
3 be available and granted to those entities liable for or  
4 against which the state income tax is allocated or assessed  
5 with respect to the income generated by or arising out of the  
6 qualifying project. It shall not be a requirement of this  
7 article that the entity employing any new employees be the  
8 same entity entitled to receive the capital credit so long as  
9 the requirements of capital costs and new employees are  
10 implemented and maintained with respect to the qualifying  
11 project.

12 "(c) A change of ownership or assignment of interest  
13 in any qualifying project shall not qualify the qualifying  
14 project or any taxpayer to receive any additional capital  
15 credits, and the purchaser, assignee, or successor of the  
16 qualifying project or interests therein shall be entitled to  
17 the capital credit upon the same conditions and for the same  
18 period as the investing company or companies originally  
19 entitled to the capital credit.

20 "(d) The Legislature recognizes that while certain  
21 periods specified in this article with respect to the capital  
22 credit are measured by calendar years it will be necessary for  
23 the capital credit to be applied with respect to the tax years  
24 of the recipients of the capital credit. Accordingly, the  
25 department is hereby authorized to adopt regulations to  
26 provide that the capital credit may be allocated to the tax  
27 years of the recipient of the capital credit, including the

1 method of determining the pro rata amount of capital credit,  
2 if any, available where the tax year of the recipient of the  
3 capital credit will end subsequent to the end of any calendar  
4 year period specified in this article.

5 "(e) A company shall be considered to have met the  
6 employment and wage requirements for the portion of the year  
7 following the date upon which such requirements are first met  
8 and for each full year thereafter (such portion of a year and  
9 each full year thereafter during the 20 year credit period is  
10 hereinafter referred to as a "compliance year") if the  
11 employment requirement is satisfied for at least 11/12 of each  
12 compliance year and the wage requirement is met based on an  
13 average determined over each compliance year.

14 "(f) (1) Any investing company that meets the  
15 employment and wage requirements of this section by a date  
16 which is not later than one year after the date on which the  
17 qualifying project is placed in service, but fails to meet  
18 such requirements in any subsequent compliance year, may still  
19 claim the capital credit for each compliance year in which  
20 such investing company again meets the employment and wage  
21 requirements of this section. In no event, however, shall an  
22 investing company be able to claim a capital credit in a  
23 compliance year beginning: (i) after the third compliance year  
24 (whether or not consecutive) in which the investing company  
25 fails to meet the employment and wage requirements of this  
26 section; or (ii) more than nineteen (19) years after the year  
27 in which the qualifying project is first placed in service.

1           "(2) Any investing company that files a written  
2 statement of intent (Form INT) with the department after May  
3 21, 2009 and that meets the employment and wage requirements  
4 of this section by a date which is not later than one year  
5 after the date on which the qualifying project is placed in  
6 service, but fails to meet such requirements in any subsequent  
7 compliance year, shall forfeit a percentage of the capital  
8 credits claimed in the prior five years. The forfeiture shall  
9 equal 100 percent of the capital credits claimed in the year  
10 immediately preceding the year in which the investing company  
11 fails to maintain the employment and wage requirements of this  
12 section. The forfeiture percentage shall be reduced by 20  
13 percent for each successive prior year in the five year  
14 forfeiture period. The forfeiture of capital credits shall be  
15 treated in the same manner as the imposition of the tax  
16 imposed by this chapter and shall be payable by the investing  
17 company on the fifteenth day of the third month following the  
18 close of the year in which the investing company failed to  
19 meet the employment and wage requirements of this section."

20           Section 3. The provisions of this act are severable.  
21 If any part of this act is declared invalid or  
22 unconstitutional, that declaration shall not affect the part  
23 which remains.

24           Section 4. This act shall become effective  
25 immediately following its passage and approval by the  
26 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Economic Devel-  
opment and Tourism..... . . . . . 07-APR-11

Read for the second time and placed  
on the calendar with 1 substitute  
and..... . . . . . 19-APR-11

Read for the third time and passed  
as amended..... . . . . . 03-MAY-11

Yeas 96, Nays 0, Abstains 1

Greg Pappas  
Clerk